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January 8, 2015

VIA ECF

Hon. Charles R. Breyer
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL 2672 — **Dealer Track Leadership Application**

Dear Judge Breyer,

I write to request the establishment of, and my appointment to, a leadership committee designated to represent the distinct interests of dealer plaintiffs (hereinafter "Dealer Track"). Although the dealers' claims share some common issues with those of consumer purchaser and lessee plaintiffs, I believe that the dealers' dissimilar posture vis-à-vis the defendants, and the unique discovery and burdens of proof the dealers will be subject to, warrant the creation of a separate track and separate counsel to pursue their claims. Among the counsel for independent automobile dealers who have filed cases in this MDL to date, there is unanimous consent for both the establishment of a separate Dealer Track and for my appointment to the leadership committee for that track. The attached Statement of Support (Exhibit 1) lists the attorneys for dealers who support my appointment to a Dealer Track steering committee, as well as attorneys for consumers who support the concept of a distinct Dealer Track.

I am a partner of Carlson Lynch Sweet & Kilpela, LLP, a Pittsburgh-based law firm comprised of eleven attorneys. My firm has a long record of complex litigation experience, with particular successes in cases involving data breaches, mortgage lending practices, employment matters, and consumer protection (including products liability and false advertising/deceptive marketing). Individually, I have extensive experience in complex multidistrict class actions, and the majority of my career has been spent in the fields of deceptive marketing and products liability litigation. In recent years I have been appointed to several leadership positions in multidistrict cases. I have also served as lead or co-lead counsel in numerous other class actions. Information about those cases, as well as the additional items requested by the Court in Pretrial Order No. 2 are addressed on the pages that follow and in the resume attached as Exhibit 2.

1. Experience in Similar Litigation and Leadership Appointments

I have been litigating complex class action or mass tort matters for my entire career. I am currently appointed to leadership positions in three pending MDL matters. Recently, I was

appointed as co-lead class counsel in *In re SuperValu, Inc. Customer Data Security Breach Litigation*, MDL 2586 (D. Minn.). In that litigation, I represent customers of approximately 1,000 grocery stores whose card payment information was compromised as a result of a data breach at a large supermarket conglomerate in 2014. The case is still in the pretrial phase. I am also currently serving on the executive committee in two consolidated actions related to the deceptive marketing and advertising of glucosamine and chondroitin nutritional supplements. *In re Nutramax Cosamin Marketing and Sales Practices Litig./In re GNC Corp. TriFlex Products Marketing and Sales Practices Litig.*, MDL 2498/2491 (D. Md.).

My firm is also involved in well-known complex class-action matters in courts around the country. Currently, members of my law firm occupy leadership roles in the following significant class-action and MDL matters:

- *In re Community Bank of Northern Virginia Mortgage Lending Practices Litig.*, MDL 1674 (W.D. Pa.). Our firm serves as co-lead counsel for a class of tens of thousands of secondary mortgage borrowers who allege violations of numerous federal consumer protection laws. A class was certified by the district court in 2013, a decision which was affirmed on appeal in 2015. *See* 795 F.3d 380 (2015).
- *In re Residential Capital, LLC/Drennan et al. v. Certain Underwriters at Lloyd's of London et al.*, No. 15-1025 (Bankr. S.D.N.Y.), a class-action adversary proceeding in bankruptcy court seeking insurance coverage for more than \$300 million of claims that were certified and approved during the bankruptcy process.
- *In re Home Depot Customer Data Breach Litig.*, MDL 2583 (N.D. Ga.). Our firm holds a co-lead counsel position as well as several key committee positions in the financial institution track of this case relating to the 2014 data breach at Home Depot stores. The case is still in the pre-trial phase.
- *In re Target Corporation Customer Data Breach Litig.*, MDL 2522 (D. Minn). Our firm holds a position on the executive committee in this action related to the 2013 data breach at Target stores. Both the consumer and financial institution tracks reached settlements in 2015.
- *In re Blue Cross Blue Shield Antitrust Litig.*, MDL 2406 (N.D. Alabama). Our firm holds an executive committee position in this case regarding alleged collusive behavior among health insurance providers.

2. Contact Information for Judges Presiding Over Cases Listed Above

- *In re SuperValu Inc. Customer Data Security Breach Litig.*, MDL 2586 – Hon. Ann D. Montgomery (D. Minn.) – (612) 664-5090
- *Glucosamine/Chondroitin Marketing and Sales Practices Litig.*, MDLs 2498/2491 – Hon. J. Frederick Motz (D. Md.) – (410) 962-0782
- *In re Community Bank of Northern Virginia Mortgage Lending Practices Litig.*, MDL 1674 – Hon. Arthur J. Schwab (W.D. Pa.) – (412) 208-7423
- *In re Residential Capital, LLC/Drennan et al. v. Certain Underwriters at Lloyd's of London et al.*, No. 15-1025 – Hon. Sean H. Lane (Bankr. S.D.N.Y.) – (212) 668-5637
- *In re Home Depot Customer Data Breach Litig.*, MDL 2583 – Hon. Thomas W. Thrash, Jr. (N.D. Ga.) – (404) 215-1550

- *In re Target Corporation Customer Data Breach Litig.*, MDL 2522 – Hon. Paul A. Magnuson (D. Minn.) – (651) 848-1150
- *In re Blue Cross Blue Shield Antitrust Litig.*, MDL 2406 – Hon. R. David Proctor (N.D. Ala.) – (205) 278-1980

3-8. Willingness and Ability to Immediately Commit to the Litigation, Ability to Work with Plaintiffs’ and Defense Counsel, Access to Resources, and Willingness to Serve as Lead Counsel/Member of Steering Committee

Should I receive an appointment, I and my firm will be ready, willing, and able to commit to this litigation immediately. As a litigator and, more importantly, as a member of the bar take pride in my record of professionalism and cooperative spirit. In my approach to litigation, my belief has always been that negotiation and compromise are far more efficient tactics than blind antagonism. Even when I have strong disagreements with co-counsel or opposing counsel, I strive to maintain a respectful decorum worthy of the trust placed in me by my clients and the court. I have had the privilege of working with many of the attorneys who are applying for leadership positions in this MDL, and I can represent to this Court that I am willing and able to work cooperatively with whomever is appointed, as well as opposing counsel.

My firm has the ability to commit resources (financial and personnel) to prosecute this case in a timely fashion. Ten of our eleven attorneys focus on class action work and nine of them have experience with multidistrict litigation. Carlson Lynch Sweet & Kilpela has enjoyed several years of steady growth and we recently opened a new home office in Pittsburgh that has improved our capacity, as well as our efficiency. As part of our expansion, we also added three associates to our ranks in 2015.

In filing this application I respectfully seek appointment as a member of a Plaintiffs’ Steering Committee for the Dealer Track. Reflecting the cooperative spirit in which I (and others applying for leadership positions for the Dealer Track operate, Your Honor will notice that we have self-organized in a manner that we believe is efficient and will ensure effective advocacy for the class we seek to represent. My application is supported not only by many attorneys representing automobile dealers, but also several of the firms seeking to represent individual consumers.

I assure the Court that this matter will be my highest priority if appointed and look forward to working with all involved to ensure the efficient and effective resolution of the claims at issue.

Sincerely,

/s/Edwin J. Kilpela, Jr.
Edwin J. Kilpela, Jr.